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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

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CLERK OF THE COURT

BY: B. Chamberlain

IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

V1300CR201080049

**STATE'S RESPONSE TO DEFENDANT'S  
MOTION IN LIMINE (NO. 1) TO EXCLUDE  
EVIDENCE OF PRIOR ACTS  
PURSUANT TO ARIZ. R.  
EVID. 404(B) AND 403**

**(The Honorable Warren Darrow)**

The State of Arizona, through undersigned counsel, requests that this Court deny Defendant's Motion In Limine to Exclude Evidence of Prior Acts. The following Memorandum of Points and Authorities support this response.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**The Facts:**

On October 8, 2009, Yavapai County Sheriff's Office responded to the Angel Valley Retreat in Sedona, Arizona, for a report of numerous people in various stages of medical distress. Upon arrival, detectives were informed two persons had died after being transported to the Verde Valley Medical Center and other individuals were in altered levels of consciousness and having difficulty breathing.

1 The subsequent investigation revealed the deaths occurred after approximately 55 people  
2 took part in a two-hour ceremony in a sweat lodge. In addition to James Shore and Kirby Brown,  
3 the two people who died, numerous others were hospitalized. On October 17, 2009, a third  
4 participant, Liz Neuman, died.

5 The sweat-lodge ceremony was part of a five-day seminar titled "Spiritual Warrior"  
6 sponsored by James Arthur Ray, a motivational speaker and author of some renown. The Yavapai  
7 County Sheriff's Office originally initiated an accidental death investigation. The investigation was  
8 subsequently upgraded to a homicide investigation.

9 The investigation established Defendant had conducted prior sweat lodge events, and  
10 knew participants in those prior sweat lodge events had suffered adverse medical problems during  
11 the sweat lodge event, including at least one prior participant in 2005 who was transported to the  
12 hospital. Despite that knowledge, Defendant continued to operate the lucrative<sup>1</sup> sweat lodge  
13 events. Prior to entering the sweat lodge, Defendant told participants that they might vomit and  
14 that was normal and assured participants that, although they might feel like they were going to die  
15 inside the sweat lodge, they would not. Defendant also discouraged participants from helping  
16 others inside the sweat lodge, assuring the participants that Defendant's staff would provide any  
17 necessary assistance.

18 On February 3, 2010, the Yavapai Grand Jury indicted Defendant on three counts of  
19 manslaughter for the deaths of victims Kirby Brown, James Shore and Elizabeth Neuman.

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<sup>1</sup> Approximately 47 people participated in the 2009 sweat lodge event near Sedona as fee paying participants, many paying Defendant up to \$10,000 to attend.

## II. PRIOR ACTS

### 2005/2007/2008 Sweat Lodge Ceremonies

In 2005, Defendant led another group of Spiritual Warrior participants in a sweat lodge ceremony, very similar to the 2009 ceremony. Following the ceremony, one participant, Daniel Pfankuch, was described as unconscious. He was eventually transported to the hospital where he was diagnosed with heat stroke. Another participant, David Duhaime, rendered aid to Pfankuch and told Defendant's staff to call 911. They refused to do so. Finally, the owner of Angel Valley, Amayra Hamilton, called 911 and Daniel was transported to the hospital. Another participant in the sweat lodge, Mickey Reynolds, told investigators that the people inside the sweat lodge started to panic and state they wanted to leave but were told by Defendant they needed to sit down. Duhaime, Reynolds and Hamilton will testify that following the incident they confronted Defendant and told him what he was doing was dangerous and he needed to have medical professionals there for future events. Further, Hamilton will testify that Defendant later berated her for calling 911.

A former James Ray International employee, Teri Gingerella, also participated in the 2005 sweat lodge ceremony. Gingerella told the investigating officers that while she was in the sweat lodge she noticed a female who was having trouble breathing, but when she told Defendant he told her to be silent because the ceremony had begun. Following the ceremony, Gingerella stated Defendant left to shower and people were looking to her for help with the situation which she described as an insane asylum with Daniel hallucinating and others shouting and dropping to the ground. Gingerella indicated she had no idea how to handle the situation. Gingerella also told investigators that she witnessed the confrontation between Defendant and Hamilton and was aware that Reynolds had confronted Defendant and was told to "back off."

1 Prior to and after Defendant's arrest in this matter, Defendant's attorneys prepared two  
2 "white papers," in the form of letters to this office, which were posted on Defendant's web site.  
3 In the letters, Defendant's counsel repeatedly refers to the episode in 2005 "in which a  
4 participant required medical attention" and emphasized that, after the event in 2005, "JRI took  
5 extensive safety precautions." It is interesting to note that Defendant has since repeatedly tried  
6 to minimize the extent of Daniel Pfankuch's medical distress, yet at the beginning of this  
7 investigation alleged that this incident was significant enough that it lead JRI to take "extensive  
8 safety precautions."

9  
10 Notwithstanding, the alleged "extensive safety precautions," participants from the 2007  
11 and 2008 sweat lodge ceremonies have also reported that participants suffered physical distress.  
12 In 2007, two participants describe people vomiting and seeing at least one person who was  
13 unconscious. In 2008,<sup>2</sup> participants describe a scene that can only be seen as a foreshadowing of  
14 the events of 2009. Using terms like "carnage," "war zone," and "triage unit," participants have  
15 told detectives participants were unconscious, vomiting, and "out of their minds." At least one  
16 participant indicated she thought she was going die, another indicated that in addition to one  
17 person being unconscious, "about 20 people were "sick, overheated and throwing up." The State  
18 agrees that some participants, including Defendant, in 2005, 2007, 2008 and even 2009 suffered  
19 no ill effects. However, based on interviews it is evident that the location of an individual within  
20 the lodge had a significant impact on the physical effects suffered.  
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<sup>2</sup> Only a limited number of participants from prior events have been interviewed.

**Injuries at Other James Ray Events**

The investigation has revealed significant physical injuries have also occurred at other James Ray events. Again, Defendant attempts to minimize and even contradict the participants' descriptions of what they suffered, but the fact remains that witnesses have come forward with evidence of prior events where participants were placed in situations where serious physical injuries could occur and no precautions were taken.

These events include the eye injury to Kurt Reinkens at Quantum Leap in 2007, which he described as follows:

I went first and uhm I noticed that the person that I lined up across one of his Dream Team or staff members was wearing safety goggles and had a leather glove on. And uhm as I leaned forward the shaft of the arrow bends which I'm sure he's trained their staff to do, is to make sure they bend, but the, the, so the wood splinters but the, the, can imagine the splinters going off in random directions uh, one of the splinters flew up underneath my glasses and uhm penetrated my eyelid. It was kinda a bloody mess and discovered very quickly that they were not prepared for un anything to go wrong. They didn't have any first aid, they had to scramble and go to the hotel and the hotel found a, a first, a little, cheap, plastic first aid kit.

*Declaration of Tru Do, Exhibit 7 at Bates No. 277.*

Defendant also attempts to minimize the injuries that occurred in the brick-breaking event at the Modern Magick conference in Kona, Hawaii. Defendant refers to Sheryl Stern's interview and states "she didn't do it properly." What Defendant omits is Ms. Stern's later statements which reveal that, notwithstanding her injury in 2007, Defendant continued with the brick-breaking exercise, and in the 2008 Modern Magick conferences "several people broke their bones. I don't know how many. Uhm but several did." *Declaration of Tru Do, Exhibit 6 at Bates No. 1022.* In fact, one witness testified that at Modern Magick 2008 "there were probably 15 to 16 people in the emergency room with broken bones after an exercise went wrong." *YCSO DR 09-040205, Supplement 132, Interview of Nancy Olgelvy at Bates No. 1307.*

1 Defendant also tries to disclaim any responsibility for the suicide of Colleen Conaway.  
2 However, the significance of the suicide of Colleen Conaway is not in the tragedy itself; instead  
3 it is in the reaction of the JRI staff to the event. Participants report that they were never  
4 informed that one of the seminar participants had died and that the seminar continued through  
5 the end without mention of this tragedy, including Defendant making sales pitches for future  
6 events. *YCSO DR 09-040205, Supplement 61, Interview of Hope Miller at Bates No. 269.*  
7

## 8 II. LAW AND ARGUMENT

9 The State intends to present evidence of the prior sweat lodges and other JRI events where  
10 injuries occurred pursuant to Rule 404(b) of the Rules of Evidence in order to prove Defendant's  
11 motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake or accident in the  
12 pending case.

13 Rule 404(b) permits other act evidence when offered for any relevant purpose; the  
14 evidence cannot be admitted where it is only offered to prove the bad character of the defendant.  
15 The listed purposes in the rule are not exclusive; the phrase "such as" clearly suggests that there  
16 are additional relevant purposes that would allow admission of other act testimony. *State v. Via*,  
17 146 Ariz. 108, 122, 704 P.2d 238 (1985). As noted by Judge Livermore in his revision of Udall's  
18 text on evidence:  
19

20 The general rule is easy to state: Evidence of other crimes is admissible when it is  
21 offered for any relevant purpose other than to prove the character of a person.

22 Udall and Livermore, Ariz. Practice: Law of Evidence, Section 84 at page 178 (Second  
23 Edition, 1982).

24 For the reasons discussed below, the prior events are clearly relevant to show Defendant's  
25 mental state. "Evidence of a prior crime, act, or wrong cannot be introduced to prove a  
26 defendant's mental state unless it is similar to the act for which the defendant is on trial." *State v.*

1 *Woody*, 173 Ariz. 561, 563, 845 P.2d 487, 489 (App. 1993). "The prior act need not be factually  
2 identical to the crime at issue, however. It is sufficient for purposes of Rule 404(b) if it can  
3 permit the jurors to infer either that the defendant intended the act in question or had knowledge  
4 of its consequences." *Id.*

5 1. Intent, Knowledge and Absence of Mistake

6  
7 Defendant is charged with three counts of Manslaughter pursuant to A.R.S. § 13-1103(A)(1)  
8 for recklessly causing the deaths of James Shore, Kirby Brown and Liz Neuman. The mental state  
9 of "recklessly" requires proof that a person is aware of and consciously disregards a substantial and  
10 unjustifiable risk that the result, in this case the deaths of three individuals, will occur. A.R.S. § 13-  
11 105(10)(c). Under the definition, "[t]he risk must be of such nature and degree that disregard of  
12 such risk constitutes a gross deviation from the standard of conduct that a reasonable person would  
13 observe in the situation." *Id.* Defendant has filed a Rule 15 Disclosure listing "lack of *mens rea*"  
14 and "lack of causation" as defenses. Since the requisite mental state is an element of each offense,  
15 the State is required to prove intent, knowledge and absence of mistake. Intent is frequently proven  
16 by evidence of other acts of the same or similar character because recurrence of an act controverts  
17 the claim that it was done by accident or mistake. *State v. Rose*, 121 Ariz. 131, 589 P.2d 5 (1978);  
18 *State v. Sinbourne*, 116 Ariz. 403, 569 P.2d 833 (1977).

19  
20 Through the events that occurred at the prior sweat lodges conducted by Defendant,  
21 Defendant was made aware of the risks the sweat lodge posed to participants. Thus, this evidence is  
22 relevant to the issue of whether Defendant's "mental state reflected a reckless indifference to human  
23 life." See *State v. Woody*, 173 Ariz. 563, 845 P.2d at 489 (holding appellant's prior convictions  
24 for DUI was relevant in manslaughter trial to establish he had grounds to be aware of the risks  
25 his drinking and driving while intoxicated presented to others).  
26

1 Evidence of the injuries that occurred at other James Ray events, including Defendant's  
2 continued efforts to minimize the injuries and disclaim all responsibility for them, also goes directly  
3 to the fact that Defendant knew or should have known that he was placing individuals in danger of  
4 injury. Despite this knowledge, Defendant continued to hold the events, took no precautions to  
5 prevent the injuries or took inadequate precautions, and when injuries did occur, disclaimed any  
6 responsibility.  
7

8 2. Defendants' Motive and Plan

9 The evidence is equally admissible as relevant to show Defendant's motive. As noted in the  
10 State's response to Defendant's motion to preclude any references to Defendant's financial condition  
11 or business practices, it is the State's theory of the case that Defendant's actions were driven by his  
12 desire to increase participation in his seminars and thereby increase his profits. In order to achieve  
13 this goal, Defendant believed he needed to "push the envelope" by offering events where  
14 participants faced extreme physical challenges, i.e., breaking cement blocks, walking on burning  
15 coals or broken glass, bending rebar with their necks, fasting for 36 hours in the desert and  
16 ultimately, taking part in a two to three hour sweat lodge. In seeking to "push the envelope,"  
17 Defendant developed activities with high risks of injury and/or physical distress and failed to  
18 provide for safeguards to both prevent and address injuries and/or physical distress. When  
19 injuries did occur as in the prior sweat lodge events, Defendant minimized the danger, refused to  
20 acknowledge any responsibility, and took steps to minimize the public's (and his event  
21 participants') knowledge of the injuries in order to continue to attract participants. Finally, the  
22 financial evidence will support the Defendant's motive to downplay any risks involved and to  
23 continue to conduct activities without regard to the substantial dangers they posed to the  
24 participants.  
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1 The standard governing the admissibility of other act evidence is set forth in Rules 401, 402,  
2 403 and 404 of the Arizona Rules of Evidence. Rule 401 defines "relevant evidence" as evidence  
3 "having any tendency to make the existence of any fact that is of consequence . . . more probable or  
4 less probable than it would be without the evidence." *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d  
5 1071 (1988). (*emphasis added*.) This standard of relevance is not particularly high. *Id.* Rule 402  
6 provides that all relevant evidence is admissible unless that evidence is excludable on some other  
7 grounds. Pursuant to Rule 403, some relevant evidence "may be excluded if its probative value is  
8 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the  
9 jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative  
10 evidence." (*emphasis added*.) Rule 404(b) provides for the admission into evidence of other acts to  
11 prove a defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, absence of  
12 mistake or accident or to complete the story.  
13

14 Rule 104(b) of the Rules of Evidence requires that the trial court, prior to admitting the other  
15 acts, must determine whether there is sufficient evidence from which a jury (not the judge) could  
16 conclude that the other act happened and that the defendant did it. *State v. Terrazas*, 189 Ariz. 580,  
17 582, 944 P.2d 1194 (1997), provides that the standard to be used is whether the jury could find this  
18 by clear and convincing evidence. Rule 104(a) provides that in determining the admissibility of  
19 evidence, the trial court is not bound by the rules of evidence, except those with respect to privileges.  
20

21 The State therefore respectfully requests that the Court deny Defendant's motion and rule  
22 that prior acts, to include both prior sweat lodge events and other JRI events where injuries occurred,  
23 are admissible in the State's case in chief.  
24

25 **IV. State's request to supplement response.**  
26

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1 The trial in this matter was recently continued and a new trial date has not been sent. The  
2 State requests leave to supplement this response prior to any new motion deadline set by this  
3 Court.

4 RESPECTFULLY submitted this 2nd day of August, 2010.

7 By   
8 SHEILA SULLIVAN POLK  
9 YAVAPAI COUNTY ATTORNEY

10 **COPIES** of the foregoing emailed this  
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